

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ARMOND HENDERSON,

Petitioner,

v.

Case No. 07-C-1078

TIMOTHY LUNDQUIST, Warden,
New Lisbon Correctional Institution,

Respondent.

**ORDER DENYING PETITION TO PROCEED IN FORMA PAUPERIS
ON HABEAS CORPUS PETITION**

On December 3, 2007, the petitioner, Armond Henderson (“Henderson”), filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Accompanying his habeas petition was a motion for leave to proceed *in forma pauperis*. On December 3, 2007, the Clerk of Court sent a letter to Henderson directing him to complete, and return to the court, the district’s standard *in forma pauperis* petition form, together with a certified copy of his prison trust account statement for the previous six months. On December 13, 2007, Henderson filed the standard-form petition and affidavit to proceed *in forma pauperis* together with a copy of his prison trust account statement. For the reasons which follow, Henderson’s petition to proceed *in forma pauperis* will be denied.

In his *in forma pauperis* petition Henderson avers that he is currently an inmate at the New Lisbon Correctional Institution. He further avers that he has \$322.30 in a “checking, savings, or other similar accounts.” Indeed, his prison trust account activity statement (which is attached to his petition) confirms that, as of December 10, 2007, Henderson had \$322.30 in his prison trust account.

Title 28 U.S.C. § 1915(a)(1) provides, in pertinent part, that “any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without pre-payment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person unable to pay such fees or give security therefor.” To be sure, in order to be allowed to proceed *in forma pauperis* it is not necessary that a person be destitute. But, when the affidavit submitted by the person seeking to be allowed to proceed *in forma pauperis* clearly reveals that he has the financial ability to pay the cost of commencing the action, denial of the petition to proceed *in forma pauperis* is appropriate.

The filing fee for a habeas corpus petition in federal court is \$5.00. Given that Henderson has more than \$300.00 readily available to him in his trust account, I am satisfied that he is able (and should be required) to pay such filing fee. Consequently, Henderson’s petition to proceed *in forma pauperis* is denied. Upon Henderson’s paying the \$5.00 filing fee for this habeas corpus action, the court will review his petition in compliance with Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts to determine if the respondent should be required to file an answer to the petition.

NOW THEREFORE IT IS ORDERED that Henderson’s petition to proceed *in forma pauperis* be and hereby is **DENIED**;

IT IS FURTHER ORDERED that Henderson shall pay the filing fee of \$5.00 within 30 days of the date of this order; if he does not, this action shall, without further notice, be **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED this 14th day of December 2007, at Milwaukee, Wisconsin.

/s/ William E. Callahan, Jr.
WILLIAM E. CALLAHAN, JR.
United States Magistrate Judge